

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

UNITED STATES OF AMERICA,)	
)	
and the STATE OF GEORGIA,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No.
)	
DeKALB COUNTY, GEORGIA,)	
)	
Defendant.)	
)	

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency (“EPA”), and the State of Georgia, by and through the Attorney General of Georgia, acting at the request of the Georgia Department of Natural Resources (“DNR”), Environmental Protection Division (“EPD”), file this Complaint and allege as follows:

NATURE OF ACTION

1. This is a civil action for injunctive relief and penalties brought under Section 309 of the Clean Water Act (“the Act”), 33 U.S.C. § 1319, against Defendant DeKalb County, Georgia, for discharges of pollutants in violation of Section 301 of the Act, 33 U.S.C. § 1311, including discharges of pollutants from unpermitted point sources, and for violations of operation and maintenance conditions established in National Pollutant Discharge Elimination System (“NPDES”) permits issued to DeKalb County by the State of Georgia DNR, EPD, pursuant to its EPA-approved permit program under Section 402 of the Act, 33 U.S.C. § 1342.

2. The State of Georgia joins this action as a plaintiff, thereby satisfying the requirements of Section 309(e) of the Act, 33 U.S.C. § 1319(e).

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this action pursuant to Section 309(b) of the Act, 33 U.S.C. §§ 1319(b), and 28 U.S.C. §§ 1331, 1345 and 1355.

4. Pursuant to 28 U.S.C. § 1367(a), this Court has supplemental jurisdiction over the state law claims under the Georgia Water Quality Control Act,

O.C.G.A. § 12-5-20 *et seq.*, (“GWQCA”), because the state claims are so related to the federal claims that they form part of the same case or controversy.

5. Venue is proper in the Northern District of Georgia pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and 1395(a), because it is the judicial district in which DeKalb County is located and does business, and in which the alleged violations occurred.

6. As a signatory to this Complaint, the State has actual notice of the commencement of this action, in accordance with Section 309(b) of the Act, 33 U.S.C. § 1319(b).

THE PARTIES

7. The United States of America is acting at the request and on behalf of the Administrator of the EPA. The United States has authority to bring this action on behalf of the Administrator of the EPA under Section 506 of the Act, 33 U.S.C. § 1366, and 28 U.S.C. §§ 1331, 1345 and 1355.

8. The State of Georgia is acting at the request and on behalf of the Georgia DNR, EPD. The Georgia Attorney General is authorized to appear and represent the State in this action pursuant to O.C.G.A. § 12-5-49.

9. DeKalb County is a county within the meaning of O.C.G.A. § 36-1-1,

and is a "municipality" within the meaning of Section 502(4) of the Act, 33 U.S.C. § 1362(4), and a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5) and O.C.G.A. § 12-5-22(7).

10. DeKalb County is responsible for the operation and maintenance of two wastewater treatment plants, and approximately 2,600 miles of sewer lines, 66 lift stations, and approximately 55,000 manholes.

11. DeKalb County owns and operates a "treatment works" within the meaning of Section 212(2)(A) of the Act, 33 U.S.C. § 1292(2)(A).

STATUTORY BACKGROUND

12. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of a pollutant by any person into waters of the United States, except as authorized by and in compliance with certain enumerated sections of the Act, including Section 402, 33 U.S.C. § 1342, which governs the issuance of NPDES permits.

13. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that, in issuing NPDES permits, the permit-issuing authority may prescribe such conditions as it determines are necessary to carry out the provisions of the Act, including but not limited to the applicable requirements of Section 301 of the Act, 33 U.S.C. § 1311.

14. Section 402(b) of the Act, 33 U.S.C. § 1342(b), provides that EPA may approve a state NPDES permitting program within its jurisdiction. Pursuant to 33 U.S.C. § 1342(b), the State of Georgia has been authorized by EPA to administer its NPDES program since June 28, 1974.

15. O.C.G.A. § 12-5-29(a) states it shall be unlawful to use waters of the state for the disposal of sewage, industrial wastes, or other wastes, except in compliance with applicable state law, and an NPDES permit applicable to the waters involved.

16. O.C.G.A. § 12-5-30(a) requires any person who owns or operates a facility which results or will result in the discharge of pollutants from a point source into the waters of the state to obtain a permit to make such discharge.

17. O.C.G.A. § 12-5-30(c) provides that such permit may prescribe terms and conditions to assure compliance with applicable effluent limitations and water quality criteria established pursuant to the GWQCA.

18. The Clean Water Act's definition of "pollutant" in Section 502(6) of the Act specifically identifies "sewage" as a pollutant. 33 U.S.C. § 1362(6). The GWQCA similarly defines "pollutant" to include sewage. O.C.G.A. § 12-5-22(9).

19. "Treatment works" means "any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial

wastes of a liquid nature . . . including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment” 33 U.S.C. § 1292(2)(A).

20. Section 309(b) of the Act, 33 U.S.C. § 1319(b), authorizes the Administrator to commence a civil action for appropriate relief, including a permanent or temporary injunction, when any person is in violation of Section 301 of the Act, 33 U.S.C. § 1311, or any permit condition or limitation in an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

21. O.C.G.A. § 12-5-48 provides for EPD to obtain a permanent or temporary injunction when any person has engaged or is about to engage in any act or practice which constitutes or will constitute any violation of the GWQCA.

22. Section 309(d) of the Act, 33 U.S.C. § 1319(d), provides that any person who violates Section 301 of the Act, 33 U.S.C. § 1311, or violates any permit condition or limitation in an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, shall be subject to a civil penalty not to exceed \$32,500 per day for each violation which takes place after March 15, 2004 through January 12, 2009; and not to exceed \$37,500 per day for each violation which takes place after January 12, 2009, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note; Pub. L. 101-410), as amended by

the Debt Collection Improvement Act of 1996 (31 U.S.C. § 3701 note; Pub. L. 104-134). See 40 C.F.R. Part 19. See 73 Fed. Reg. 75346 (Dec. 11, 2008).

23. The implementing rules and regulations of the GWQCA are found at the Georgia Rules and Regulations for Water Quality Control, Chapter 391-3-6. DNR Rule 391-3-6-.06(16) provides that any person who violates any provision of the GWQCA, or term, condition or other requirement contained in an NPDES permit issued pursuant to the GWQCA, shall be subject to enforcement proceedings.

24. O.C.G.A. § 12-5-52(a) provides that a person who violates any provision of the GWQCA or any NPDES permit condition, shall be liable for a civil penalty of up to \$50,000 per day for each day of violation, and that a separate and later incident creating a violation within a 12-month period shall be liable for a civil penalty not to exceed \$100,000 per day for each day of violation.

GENERAL ALLEGATIONS

25. At all relevant times, DeKalb County has owned and operated treatment works including the Snapfinger Creek Wastewater Treatment Facility (“Snapfinger Creek WWTF”) regulated under NPDES Permit Number GA0024147, and the Pole Bridge Creek Wastewater Treatment Facility (“Pole Bridge Creek WWTF”) regulated under NPDES Permit Number GA0026816.

These two NPDES permits were issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, by the State of Georgia DNR, EPD, which is authorized by the EPA to implement the Act in the State of Georgia.

26. NPDES Permit Number GA0024147 for the Snapfinger Creek WWTF authorizes discharges from that WWTF facility located at 4124 Flakes Mill Road, Decatur, Georgia 30034, to receiving waters described as South River tributary to the Upper Ocmulgee River, in accordance with conditions set forth in Parts I, II and III of the Permit.

27. NPDES Permit Number GA0026816 for the Pole Bridge Creek WWTF authorizes discharges from that WWTF facility located at 4664 Flat Bridge Road, Lithonia, Georgia 30038, to receiving waters described as South River tributary to the Upper Ocmulgee River, in accordance with conditions set forth in Parts I, II and III of the Permit.

28. DeKalb County's treatment works include collection and transmission systems which are designed to convey untreated wastewater to its WWTFs, as well as to the collection and transmission system owned by the City of Atlanta which conveys wastewater to the City of Atlanta's R.M. Clayton Water Reclamation Center.

29. Part II.A.1 of the NPDES permits issued to DeKalb County for its

Snapfinger Creek WWTF and Pole Bridge Creek WWTF states in part:

“The permittee shall maintain and operate efficiently all treatment or control facilities and related equipment installed or used by the permittee to achieve compliance with this permit.”

30. On numerous occasions in the last five years, DeKalb County’s treatment works experienced overflows of untreated wastewater (“sanitary sewer overflows” or “SSOs”) containing pollutants.

31. DeKalb County’s treatment works experienced at least 256 SSOs in 2006, at least 170 SSOs in 2007, at least 149 SSOs in 2008, at least 135 SSOs in 2009, and at least 126 SSOs in 2010 through October 8, 2010.

32. Some of these SSOs resulted from surcharged manholes, or surcharged, clogged or broken sanitary sewer lines.

33. EPD has taken enforcement actions collecting penalties for reported SSOs to waters of the state which occurred from at least the year 2000 up through September 2008.

34. On numerous occasions in the last five years, SSOs from DeKalb County's wastewater collection and treatment systems have resulted in discharges of untreated sewage into Snapfinger Creek, South River, and many other water bodies that flow into the Upper Ocmulgee Watershed (Hydrologic Unit Code

03070103) and the Upper Chattahoochee Watershed (Hydrologic Unit Code 03130001), which are navigable waters of the United States, as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7), as well as waters of the state, as defined by O.C.G.A. § 12-5-22(13).

35. There are many water bodies within the Upper Ocmulgee Watershed and the Upper Chattahoochee Watershed that are included on the State of Georgia's reports under Section 303(d) of the Act, 33 U.S.C. § 1313(d), which list water bodies that do not meet or are not expected to meet fecal coliform bacteria and other water quality standards, including Snapfinger Creek and South River.

36. On numerous occasions in the last five years, DeKalb County has “discharged” “pollutants” within the meaning of Sections 502(6) and (12) of the Act, 33 U.S.C. §§ 1362(6), (12), from “point sources” within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14), into “navigable waters” within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2.

37. On numerous occasions in the last five years, DeKalb County has discharged untreated sewage into waters of the state, as defined by O.C.G.A. § 12-5-22(13).

38. In addition, SSOs from DeKalb County's treatment works include

overflows of untreated wastewater that did not reach waters of the United States or the state.

FIRST CLAIM FOR RELIEF
ILLEGAL DISCHARGES OF UNTREATED SEWAGE

39. The allegations of the foregoing paragraphs are incorporated herein by reference.

40. On numerous occasions in the last five years, DeKalb County's treatment works experienced SSOs containing pollutants that discharged to waters of the United States and/or the state. These SSOs are from point sources within DeKalb County's collection and transmission systems which were not identified in an NPDES permit as authorized outfalls. None of these discharges was permitted or otherwise authorized by the Act.

41. Each day of each unpermitted discharge by DeKalb County which reaches waters of the United States is a separate violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

42. DeKalb County is liable for civil penalties under 309(d) of the Act, 33 U.S.C. § 1319(d), as amended.

43. Each day of each unpermitted discharge by DeKalb County which reaches waters of the state is a separate violation of O.C.G.A. § 12-5-29(a).

44. DeKalb County is liable for civil penalties under O.C.G.A. § 12-5-52.

45. DeKalb County continues to violate the Act and the GWQCA by discharging wastewater containing pollutants without a permit from point sources within its collection and transmission systems that are not identified in its NPDES permit as authorized outfalls. Unless restrained by an order of the Court, DeKalb County will continue to discharge pollutants from point sources without a permit or other authorization, in violation of the Act and the GWQCA.

SECOND CLAIM FOR RELIEF
FAILURE TO COMPLY WITH PERMIT CONDITIONS:
OPERATION AND MAINTENANCE VIOLATIONS

46. The allegations of the foregoing paragraphs are incorporated herein by reference.

47. Many of the SSOs alleged in the previous claim that constitute unauthorized discharges to waters of the United States and the state, as well as some SSOs that did not reach waters of the United States or the state, resulted, in whole or in part, from DeKalb County's failure to efficiently operate and maintain the collection and transmission systems of its treatment works as required by the respective NPDES permits.

48. On numerous occasions in the last 5 years, DeKalb County failed to efficiently operate and maintain the collection and transmission systems of its treatment works in violation of the operation and maintenance provisions of its

NPDES permits (see Part II.A.1 of both NPDES permits) as evidenced in part by the SSOs referred to in the paragraph above.

49. Each day DeKalb County failed to comply with the operation and maintenance provisions of its NPDES permits, resulting in SSOs, constitutes a separate violation of the Act, Sections 301(a) and 402, 33 U.S.C. §§ 1311(a) and 1342.

50. DeKalb County is liable for civil penalties under 309(d) of the Act, 33 U.S.C. § 1319(d), as amended.

51. Each day DeKalb County failed to comply with the operation and maintenance provisions of its NPDES permits, resulting in SSOs, constitutes a separate violation of DNR Rule 391-3-6-.06(16) and O.C.G.A. § 12-5-29(a).

52. DeKalb County is liable for civil penalties under O.C.G.A. § 12-5-52.

53. Unless restrained by an order of the Court, DeKalb County will continue to violate Sections 301(a) and 402 of the Act, 33 U.S.C. §§ 1311(a) and 1342, and DNR Rule 391-3-6-.06(16) and O.C.G.A. § 12-5-29(a), by failing to comply with the operation and maintenance provisions in its NPDES permits.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, the United States of America and the State of

Georgia, request that the Court enter judgment on their behalf as follows:

A. Pursuant to 33 U.S.C. § 1319(b) and O.C.G.A. § 12-5-48, order DeKalb County to undertake a program to achieve permanent and consistent compliance with all terms and conditions of its NPDES permits, the Georgia Water Quality Control Act, and the Clean Water Act, and the regulations promulgated thereunder for its treatment works, and in particular, its collection and transmission systems;

B. Pursuant to 33 U.S.C. § 1319(d), as amended, assess civil penalties against DeKalb County of up to \$32,500 per day for each day of violation that occurred through January 12, 2009, and up to \$37,500 per day for each day of violation that occurred after January 12, 2009, as appropriate, as permitted by law;

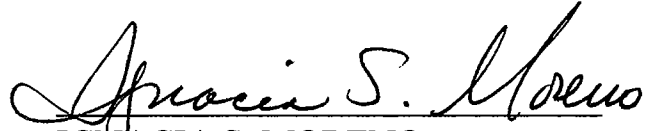
C. Pursuant to O.C.G.A. § 12-5-52, assess civil penalties against DeKalb County, as appropriate, as permitted by law;

D. Award the Plaintiffs their costs in the action; and

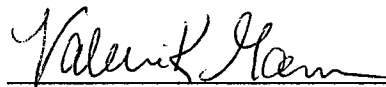
E. Grant the Plaintiffs such other relief as the Court deems appropriate.

ATTORNEYS FOR UNITED STATES OF AMERICA:

Respectfully submitted,



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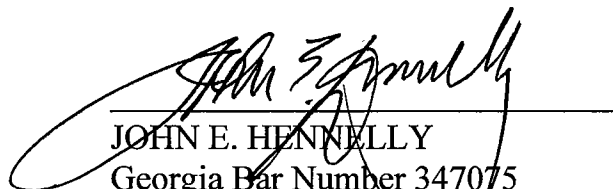
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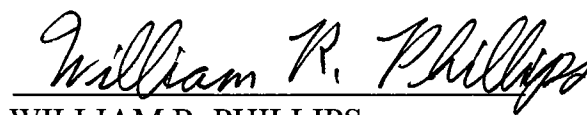
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